



EP Voluntary Compliance

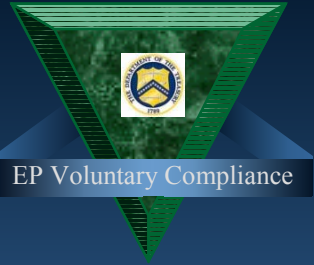
Internal Revenue Service

Employee Plans Compliance
Resolution System (“EPCRS”)



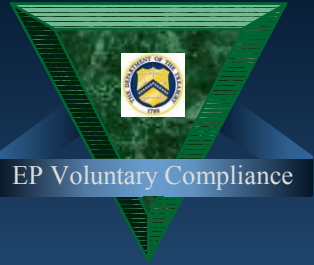
Employee Plans Compliance Resolution System (“EPCRS”)

- **Comprehensive system of correction programs that permits sponsors of Qualified Plans, 403(b) Plans, SEPs and SIMPLE IRAs to correct eligible failures and to continue providing their employees with retirement benefits on a tax-favored basis**



408(q) Deemed IRAs

The Service is seeking comments regarding appropriate correction for failures in plans with § 408(q) “deemed IRA” provisions



Basic Elements of EPCRS

- **Self-correction of failures - generally does not require Service approval or the payment of any fee/sanction**
- **Voluntary correction of failures - requires Service approval and the payment of a fee**
- **Correction of failures identified on audit - requires Service approval and the payment of a negotiated sanction**



Self-Correction Program ("SCP")



Applies to:

- 1. Operational Failures in Qualified Plans and 403(b) Plans**
- 2. Insignificant Operational Failures in SEPs**



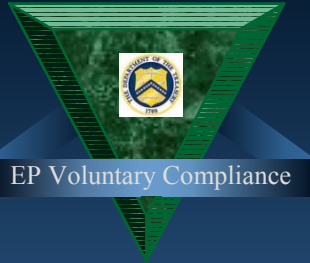
SCP (continued)

- Available to correct:
 1. Insignificant Operational Failures in Qualified Plans, 403(b) Plans, SEPs and SIMPLE IRAs, even if they are discovered on audit
 2. Significant Operational Failures in Qualified Plans and 403(b) Plans that are corrected within the applicable correction period



SCP (continued)

- **Correction methods described in Appendices A and B of Revenue Procedure 2003-44 are generally viewed as “safe-harbor” methods that may be used to resolve eligible Operational Failures through SCP**



Voluntary Correction Program

- **Applies to Qualified Plans, 403(b) Plans, SEPs and SIMPLE IRAs**
- **Plan Sponsors may correct any type of “Qualification” Failure**
- **Voluntary correction of failures - requires Service approval and the payment of a fee**



Voluntary Correction Program

- ✓ Prior to modification by RP 2003-44, VCP consisted of separate procedures, defined by type of failure and/or type of plan
- ✓ Under Rev. Proc. 2003-44, all of EPCRS' voluntary correction procedures were consolidated into a single Voluntary Correction Program (VCP); special procedures (e.g., VCO, VCS, VCT, and VCSEP) were eliminated.
- ✓ In addition, EPCRS was expanded to cover SIMPLE IRAs



VCP Compliance Fees

- **Completely revised and reorganized VCP compliance fee structure.**
- **Established a fixed fee for all VCP requests (including Anonymous Submissions) that is generally based on the number of participants/employees in the plan, as outlined on the following slides:**



VCP Compliance Fees (continued)

Qualified Plans and 403(b) Plans (including Anonymous Submissions):

<u># of participants/employees</u>	<u>Fee</u>
20 or fewer	\$ 750
21 to 50	1,000
51 to 100	2,500
101 to 500	5,000
501 to 1,000	8,000
1,001 to 5,000	15,000
5,001 to 10,000	20,000
Over 10,000	25,000



VCP Compliance Fees (continued)

Nonamenders – Fees are determined in accordance with the fee schedule on the previous slide, but if Plan Sponsors submit VCP requests within the one-year period following the expiration of their plans' remedial amendment periods, their fees are reduced by 50%.



VCP Compliance Fees (continued)

SEPs and SIMPLE IRA Plans (including Anonymous Submissions) = \$500

Group Submissions – The fee is based on the number of plans affected by the failure(s):

- **First 20 plans = \$10,000**
- **Each additional plan = \$250**
- **Maximum fee for all plans = \$50,000**



VCP Compliance Fees (continued)

For all VCP requests, a fee payment must be submitted with the initial request. Any additional fees (such as those stemming from the retention of Excess Amounts in 403(b) Plans, SEPs, or SIMPLE IRA Plans, or in the case of a Group Submission) will be due when the compliance statement is signed.



VCP Compliance Fees (continued)

The compliance fee for egregious failures remains a negotiated percentage (not to exceed 40%) of the Maximum Payment Amount (or Total Sanction Amount for a 403(b) Plan).



EGTRRA Nonamenders

EPCRS is now available to correct Qualified Plans that have failed to adopt timely good faith plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).



EGTRRA Nonamenders (continued)

- Upon completion of submission, a compliance statement will be issued. **NOTE:** For ongoing plans, since our determination letter program has not opened for EGTRRA amendments, a determination letter will not be issued.
- Plan Sponsor must adopt the good faith amendments within the time period specified in the compliance statement.



VCP Submission Requirements

Plan Sponsor or the representative identifies:

- **The type of plan being submitted, and**
- **Whether the submission is a Group, Anonymous, or nonamender submission, if applicable.**



Anonymous & Group Submissions

Continue be ongoing parts of VCP.

Expanded to apply to SEPs and SIMPLE IRA Plans.

Anonymous Submissions - Guidance was added regarding when to submit:

- **Power of attorney statement,**
- **Penalty of perjury statement, and**
- **Related determination letter applications.**



Anonymous & Group Submissions (continued)

Group Submission process was simplified:

- 1. A power of attorney for each affected plan is no longer required.**
 - a. Eligible Organization must provide notice to affected Plan Sponsors regarding the Group Submission.**
 - b. Once the compliance statement is issued, the Eligible Organization must submit a certification that each affected Plan Sponsor received the notice.**



Anonymous & Group Submissions (continued)

- **Notice must be provided at least 90 days before the Eligible Organization provides the required certifications and identifying information regarding the affected plans to the Service**
- **Plan Sponsor may opt out of coverage by Group Submission**



Correction for SEPs and SIMPLE IRA Plans

Defined “reasonable and appropriate” correction for SEPs and SIMPLE IRA Plans as correction methods permitted under Appendices A and/or B that apply to SEPs or SIMPLE IRA Plans.

Expanded existing correction guidance for SEPs (e.g., correction of failures to satisfy deferral percentage test, treatment of undercontributions, etc.) so that it also applies to SIMPLE IRA Plans.



Correction for SEPs and SIMPLE IRA Plans (continued)

Added a section regarding Excess Amounts:

1. Distribution of Excess Amounts:

a. To the participant:

- **Elective deferrals, adjusted for earnings through the date of correction**
- **Includible in participant's gross income in the year of distributions**
- **Must be reported on Form 1099-R for the year of the distribution**



Correction for SEPs and SIMPLE IRA Plans (continued)

b. To the Plan Sponsor:

- **Employer contributions, adjusted for earnings through the date of correction**
- **Not includible in the gross income of the participant**
- **Cannot be deducted by the Plan Sponsor**
- **Must be reported on Form 1099-R as \$0 taxable amount**



Correction for SEPs and SIMPLE IRA Plans (continued)

2. Retention of Excess Amounts:

- a. Plan Sponsor will be required to pay a special fee (in addition to the VCP compliance fee that is submitted with the initial VCP request)**
- b. Special fee will equal at least 10% of the Excess Amount, excluding earnings**



Correction for SEPs and SIMPLE IRA Plans (continued)

- 3. De minimis Excess Amounts:**
 - a. \$100 or less**
 - b. Can be attributable to elective deferrals or employer contributions**
 - c. Plan Sponsor is not required to distribute the Excess Amount**
 - d. Special fee will not apply**



General Correction Guidance

Clarified two of the exceptions to full correction:

- 1. Reasonable estimates**
- 2. Recovery of small Overpayments**



General Correction Guidance (continued)

Added guidance (within section 6) regarding the correction methods relating to

- (a) The failure to obtain required spousal consent under §§ 401(a)(11) and 417, and**
- (b) For plan loan failures under 72(p)**

Revised the Plan Amendment Correction Method described in Appendix B for the Inclusion of Ineligible Employee Failure



Audit Closing Agreement Program ("Audit CAP")

Revised the factors considered in determining the amount of the sanction under Audit CAP:

- 1. Removed the factor involving consideration of the VCP compliance fee.**
- 2. Added a factor, relating only to Qualified Plans, involving failure(s) that are discovered by the Service during the determination letter process.**



Effective Date

**Generally effective October 1, 2003, but
Plan Sponsors are permitted, at their option,
to retroactively apply the provisions of Revenue
Procedure 2003-44 on or after June 5, 2003.**